



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

W

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,597	12/19/2000	Bruce J. Barclay	VASC 1020-1	3762

22470 7590 09/04/2003

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 09/04/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,597

Applicant(s)

BARCLAY ET AL

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-38 is/are pending in the application.
- 4a) Of the above claim(s) 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-36 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/21/03 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 28,29,31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen et al. (5797887) in view Kropf '849. Rosen et al. disclose a patient implantable delivery device (metal stent) with an agent (NO generator) placed inside a blood vessel (endoluminal), col.6, lines 24-33. Rosen also discloses that the NO generator is microencapsulated using biodegradable material, col. 7, lines 23-27. Rosen also discloses biodegradable polymers can be used to control rates of delivery of NO, col. 7, lines 33-45. Rosen additionally discloses porous PTFE can be used on the stent, which can be interpreted as a graft material, col. 8, lines 43-52. However, Rosen et al. fail to disclose the structure of the stent as a coiled body with spaced-apart parallel side elements joined by connector elements. Kropf teaches a stent body with spaced-apart

Art Unit: 3738

parallel side elements joined by connector elements, Fig. 5. Kropf also teaches that the structural design enables the prosthesis to be deployed in a small profile reducing the likelihood of vessel trauma, col. 3, lines 8-13. It would have been obvious to one of ordinary skill in the art to substitute the stent design of Kropf in the stent device of Rosen et al. in order to provide a stent with good flexibility and a small profile for delivery. By incorporating the coil body in the stent of Rosen, the prosthesis will inherently have a coiled sleeve because Rosen discloses coating the device, col. 7, lines 46-67.

Claims 30,38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen et al. '887 in view of Kropf '849 as applied to claims 28 and 34 above, and further in view of Ragheb et al. ('904). Rosen et al. as modified by Kropf is explained supra. However, Rosen et al. in view of Kropf do not disclose the metal for the stent as nickel-titanium and to use multiple drugs with the stent graft. Ragheb teaches the stent can be made from metal, such as nickel-titanium, col. 3, lines 58-59. Ragheb additionally discloses the stent can comprise an additional drug, col. 14, lines 53-54. Drugs that can be delivered via the stent include taxol and heparin, col. 11, lines 1-11, 63-65. It would have been obvious to one of ordinary skill in the art to use Nitinol or also an additional drug with the stent graft of Rosen et al. as modified by Kropf in order to enable the stent graft to provide multiple treatment effects to the patient and also to benefit from the properties of a Nitinol stent.

Art Unit: 3738

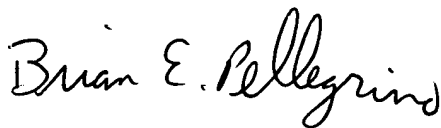
Response to Arguments

Applicant's arguments with respect to claim 28 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Brian E. Pellegrino

TC 3700, AU 3738

August 29, 2003